

## **103 KAR 18:050. Withholding statements.**

RELATES TO: KRS 141.330, 141.335

STATUTORY AUTHORITY: KRS 131.130, 141.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 authorizes the Kentucky Revenue Cabinet to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. KRS 141.335(2) requires the cabinet to establish the form and required contents of the withholding statement to be filed pursuant to KRS 141.335(1). This administrative regulation establishes those requirements.

Section 1. Acceptable Forms. The cabinet shall accept the following forms as withholding statements:

- (1) Revenue Form K-2, "Withholding Statement"; or
- (2) Federal Form W-2, "Wage and Tax Statement".

Section 2. General. Employers shall furnish to each employee, by January 31 following the close of the calendar year, the designated copies of the withholding statement if:

- (1) Tax has been withheld from wages; or
- (2) Tax would have been withheld if the employee had claimed no more than one (1) withholding exemption or had not claimed exemption from withholding.

Section 3. Contents. (1) The withholding statement shall contain the following information:

- (a) Employer's and employee's name and address;
- (b) Employer's Kentucky withholding account number;
- (c) Employee's Social Security number;
- (d) Total wages paid to employee;
- (e) Federal income tax withheld;
- (f) Kentucky income tax withheld; and
- (g) Federal employer's identification number (FEIN).

(2)(a) Withholding statements prepared incorrectly, illegibly, or on unacceptable forms shall be returned to the employer for reissuance.

(b) Commercially-printed forms shall:

1. Contain a designated space for state name, employer's Kentucky withholding account number, state wages, and state tax withheld; and
2. Conform substantially in content and size with the acceptable forms.

Section 4. Interrupted and Terminated Employment. (1)(a) If employment ends before the close of the calendar year, the employer may furnish copies to the employee at any time after employment ends, but no later than January 31 of the following year.

(b) If an employee asks for the withholding statement, copies shall be provided to the employee within thirty (30) days of the request or within thirty (30) days of the final wage payment, whichever is later.

(2)(a) If the employer terminates its business, the withholding statement shall be provided to its employees for the calendar year of termination within thirty (30) days of termination.

(b) The employer shall submit its final return and withholding statements to the cabinet within the same thirty (30) day period.

Section 5. Incorrect and Duplicate Withholding Statements. (1) If it is necessary to correct a withholding statement after it has been issued to an employee, the new withholding statement

shall be clearly marked "Corrected by Employer", and a copy submitted to the cabinet within thirty (30) days of issuance.

(2) If the withholding statement is lost or destroyed, within thirty (30) days of the request by the employee, the employer shall prepare and issue duplicate copies to the employee that are clearly marked "Duplicate."

Section 6. Cabinet Copy. (1) Designated copies of withholding statements issued shall be submitted to the cabinet by each employer with Revenue Form 42A806, Transmitter Report for Filing Kentucky Wage Statement.

(2) An employer who issues 100 or more withholding statements annually shall utilize an acceptable form of magnetic media filing.

(3) An employer who issues less than 100 withholding statements may utilize magnetic media filing.

(4)(a) The cabinet shall provide to employers by October 31 of each year information about the types of magnetic media that shall be acceptable to the cabinet.

(b) Acceptable magnetic media shall include all of the acceptable methods utilized by the Social Security Administration and the Internal Revenue Service that can be supported by the cabinet's equipment.

(5) If an employer is required to utilize magnetic media filing, it shall file the withholding statements on magnetic media unless the cabinet grants a written waiver of the requirement.

Section 7. Penalties. (1) Failure to comply with the provisions of this administrative regulation may result in the issuance of penalties in accordance with KRS 131.180 unless reasonable cause is provided.

(2) Examples. One (1) or more of the penalties may apply if the employer:

(a) Fails to file timely;

(b) Fails to include all information required to be shown on the withholding statement;

(c) Includes incorrect or illegible information on the withholding statement and fails to file corrections;

(d) Files on paper if required to file on magnetic media; or

(e) Fails to provide timely or correct payee statement to employees.

Section 8. Extension. Upon written application to the cabinet, the cabinet may grant employers an extension of time to furnish employees with the designated copy of the withholding statements. The cabinet shall not grant an extension that exceeds thirty (30) days.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Revenue Form K-2, "Withholding Statement", 2002; and

(b) Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", September, 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m. (IW-5; 1 Ky.R. 329; Am. 585; eff. 2-5-75; 3 Ky.R. 150; eff. 9-1-76; 23 Ky.R. 461; 1578; eff. 10-14-96; 30 Ky.R. 664; 1455; eff. 11-25-2003.)